

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CALVIN N.,

Claimant,

v.

REGIONAL CENTER OF ORANGE  
COUNTY,

Service Agency.

OAH Case No. 2011090908

**DECISION**

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on November 8, 2011, in Santa Ana, California.

Calvin N.<sup>1</sup> (Claimant) was not present at hearing; he was represented by his father, Cuong N. (Father). Fair Hearing Manager Paula Noden represented the Regional Center of Orange County (RCOC or Service Agency).

Minh Nguyen, a court certified interpreter, provided Vietnamese-English interpreter services for Father throughout the hearing.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on November 8, 2011.

**ISSUE**

The parties agreed that the following issue is to be decided:

Whether RCOC may reduce Claimant's one-to-one behavioral services from six hours to four hours per week.

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<sup>1</sup> The surnames of Claimant and his family have been omitted to protect their privacy.

## FACTUAL FINDINGS

1. Claimant is a nine-year-old boy and is a consumer of the Service Agency by reason of his diagnosis of Autism. He resides with his parents and his grandmother. He is ambulatory and has limited speech ability. He needs support with most daily living needs and requires constant supervision. Claimant displays challenging behaviors of noncompliance, emotional outbursts, physical aggression, and running away in the community. Claimant attends elementary school, where he receives special education services, including speech and occupational therapy and behavioral services consultation.

2. Claimant also receives behavioral services from RCOC. RCOC is providing behavioral services through ACES. Claimant currently receives six hours per week of one-to-one behavioral services, eight hours per month of consultation hours, and six hours per month of supervision.

3. On September 19, 2011, RCOC issued a Notice of Proposed Action (NOPA) proposing to reduce Claimant's one-to-one behavioral services from six hours to four hours per week and increase Claimant's consultation hours from eight hours to 12 hours per month, based on the vendor's recommendation and Claimant's progress. On September 20, 2011, Father filed a Fair Hearing Request, seeking to retain the services.

4. In a report dated July 20, 2011, ACES recommended reducing Claimant's one-to-one behavioral services hours from six hours to four hours per week, and simultaneously increasing Claimant's consultation hours from eight hours to 12 hours per month. ACES made its recommendation since Claimant has shown improvement in his challenging behaviors while in session with the ACES staff, but he continues to exhibit challenging behaviors at home. The report states, "Consultation hours will be utilized to help parents implement behavior strategies outside of session." Khang Joseph Nguyen (Nguyen), supervisor at ACES and author of the July 20, 2011 report, has worked with Claimant since he started receiving services from ACES in May 2009. At hearing, Nguyen explained that Claimant's physical aggression includes protesting, screaming, crying, and making contact with his caregiver. Nguyen explained that these behaviors are stabilized when ACES staff is present and occur with less frequency, duration, and intensity. Nguyen further explained that since Claimant's family continues to struggle with Claimant's physical aggression, the consultation hours would allow ACES staff to work with the family to help them handle the behaviors.

5. RCOC agreed with ACES's recommendations. Leslie Morrison (Morrison), Ph.D., Autism Clinical Specialist and Manager of Behavioral Services at RCOC, testified at hearing. Morrison holds her doctoral degree in behavior analysis and has been working in the field for approximately 20 years. Morrison explained that in order to help stabilize Claimant's behaviors in the natural setting, a shift to increased consultation hours is appropriate.

6. Father testified at hearing. He does not agree with ACES's recommendation. He feels that Claimant's challenging behaviors have increased and that Claimant's mother and nanny are not able to handle Claimant at times. He maintains that not all of Claimant's

behaviors are recorded in ACES's records. Father is actively participating with ACES to address Claimant's behavioral goals, but does not feel that the family knows all of the triggers and techniques to address Claimant's behavioral challenges. Although Father feels that some of the techniques are not effective, Father acknowledged that the family needs to learn how to deal with certain situations from experienced ACES staff members.

7. Claimant's most recent Individual Program Plan (IPP), an annual review of a prior IPP, prepared after a meeting on September 27, 2011, states that he exhibits the following challenging behaviors: "frequent emotional outbursts, resistiveness, physical aggression, and elopement." The IPP states, "According to the current ABA service provider (progress report dated 7/15/11), Calvin's physical aggression has decreased significantly during sessions, and he is easily redirected. However, per parents, Calvin's aggression is more intense and more frequent without therapists' presence." A desired outcome states, "Calvin will have physical aggression frequency and intensity decreased without the presence of therapists."

## LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (Welf. & Inst. Code, §§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (Welf. & Inst. Code, §§ 4502, 4512, 4620 and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (Welf. & Inst. Code, §§ 4700-4716.)

2. The Lanterman Act gives regional centers, such as Service Agency, a critical role in the coordination and delivery of services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Thus, regional centers are responsible for developing and implementing individual program plans, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

3. Welfare and Institutions Code section 4512, subdivision (b), defines the services and supports that may be funded, and the process through which such are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives. "The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual plan participants, the effectiveness of each option in meeting the goals in the individual program plan, and the cost-effectiveness of each option . . . ."(*Id.*)

4. Claimant continues to need behavioral services. ACES's recommendation of the allocation of service hours is well supported. Claimant has decreased his challenging behaviors while in session with ACES staff warranting a decrease in the number of one-to-one hours. Claimant's family continues to struggle with his challenging behaviors in the home. Therefore, Claimant will benefit from additional parent consultation services to assist with generalization. The recommendation by ACES and RCOC to reduce Claimant's one-to-one hours from six hours to four hours per week and increase his consultation hours from eight hours to 12 hours per month is supported by the evidence to meet Claimant's needs.

#### ORDER

Claimant Calvin N.'s appeal is denied. RCOC may reduce Claimant's one-to-one behavioral services from six hours to four hours per week, so long as it increases the consultation hours from eight hours to 12 hours per month.

DATED: November 23, 2011

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JANKHANA DESAI  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.